IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.Rev.Pet.No. 4089 of 2007()

CRA.789/2004 of II ADDL. SESSIONS COURT, TRIVANDRUM
CC.253/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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REVN. PETITIONER:

T.J.FAISAL, S/O.T.H.JALAL,
COROMONDAL CLAYS, INDUSTRIAL AREA
KOCHUVELI, THIRUVANANTHAPURAM
RESIDING AT HAWA MANZIL, KANAKAKUNNU LANE
THIRUVANANTHAPURAM

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS:

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1. E.A.RASHEED, S/O.IBRAHIM PILLAI
POURNAMI, PERUMTHANNI
THIRUVANANTHAPURAM REPRESENTED BY
P.A.HOLDER K.RAJU, S/O.KRISHNA PILLAI
DEVI NILAYAM, THALAYAL, BALARAMAPURAM
THIRUVANANTHAPURAM

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.S.DILEEP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4089 OF 2007

Dated this the 16th day of November, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.253/2003 on the file of the J.F.C.M.-V, Thiruvananthapuram challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions:-

While PW1, the Power of Attorney Holder of the complainant, would depose that the amount due is in favour of the firm in which E.A.Rasheed is the Managing Partner of the firm, Ext.P2 cheque is in the name of E.A.Rasheed alone. The prosecution ought to have been launched by the firm instead of E.A.Rasheed since the firm is entitled to sue and be sued in its firm name. The courts below have not considered these aspects of the matter in the right perspective.

5. I am afraid that I cannot agree with the above submissions. Even if the statement of PW1 that the liability under the cheque was towards the firm is accepted, the name of the firm is a compendious name and it cannot file a complaint in its name. E.A.Rasheed is admittedly the Managing Partner of the firm and the cheque is also in his name. Hence, even if the loan was given by the firm, of which E.A.Rasheed is admittedly the Managing Partner, there is nothing wrong in E.A.Rasheed lodging the complaint and prosecuting the accused. The position would have been different if the accused was a firm in which case section 141 of the Negotiable Instruments Act creates a legal fiction whereby the firm is treated as a company. The lower appellate court was fully justified in rejecting the above contention. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding

so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioner. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.1,75,000/- (Rupees one lakh and seventy five thousand only) within six months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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